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Jeffrey Friedman\*

POLITICS OR SCHOLARSHIP?

*Environmental issues imperil the libertarian utopia of a society in which the individual is completely sovereign over his or her private domain. Taken seriously, this aspiration would lead to an environmentalism so extreme that it would preclude human life, since most human activity entails incursions against the sovereign realms of other human beings. The fallback position many libertarians have adopted—free-market environmentalism—retreats from libertarian ideals by permitting some of the physical aggression of pollution to continue. Free-market environmentalism does embody the postlibertarian insight that collective decisions in mass democracies tend to be inferior to individual decisions in market economies. But so far, free-market environmentalism has stopped short of carrying this insight to its logical conclusion by proposing the complete depoliticization of environmental decision making. A thought experiment in environmental depoliticization reveals the practical limits of free-market environmentalism. The upshot is that neither libertarianism nor free-market environmentalism can culminate in anything close to the abolition of the modern state; they can, however, by problematizing certain aspects of that state, allow us a clearer understanding of political and cultural life.*

Mark Sagoff and Roger Taylor show elsewhere in these pages that the central libertarian principle of inviolate self- and property-ownership cul-

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\*My thanks to the critics of two discussion papers that laid the foundation for some of the ideas expressed here, especially Wilfred Beckerman, Tyler Cowen, Stephen DeCarnio, and Jo Kwong; and to Cowen, Richard Epstein, Richard Cornuelle, Barbara Friedman, and David Friedman, who commented on a draft of this essay.

minates in an environmentalism so radical that it exceeds the most antihuman tendencies that have been attributed to the deepest ecologists.<sup>1</sup> Martin Anderson, a Reagan White House official, once summarized this radical libertarian environmentalism: "Just as one does not have the right to drop a bag of garbage on his neighbor's lawn, so does one not have the right to place any garbage in the air or the water or the earth, if it in any way violates the property rights of others."<sup>2</sup> The doctrine enunciated by Anderson would require prohibiting all involuntary interpersonal physical contact; the final effect of this prohibition would be to limit the planet to one human occupant.

After criticizing the equivocations that have often obscured the radically environmentalist consequences of libertarianism, I will consider whether there can be a form of free-market environmentalism that allows a retreat from environmentalist extremism while giving due weight to valid libertarian reservations about political decision making. Thinking about how far free-market environmentalism could be pushed, while not a useful exercise in practical politics, may help to illuminate the value to postlibertarian scholars of the libertarian impulse to depoliticize the environment.

### *Libertarianism as Environmental Extremism*

The extreme environmentalist implications of libertarianism have occasioned little comment. Among environmentalists, Sagoff and Taylor may be alone in recognizing how easily the libertarian doctrine of self-ownership can be harnessed to a radical critique of pollution as a form of rights violation. Among libertarian sympathizers, only David Friedman has persistently pointed out the extreme antipollution ramifications of the libertarian principle of inviolable self-ownership—although as Taylor notes, Robert Nozick's detour to a form of free-market environmentalism may have been motivated by an awareness of where unadulterated libertarianism would lead. (Martin Anderson is probably unaware of the ramifications of his stern prescription.)

Murray Rothbard, who is the true author of the libertarian doctrine Nozick made famous (despite its Lockean and Kantian trappings), proclaims that "everyone has the right to have the physical integrity of his property inviolate."<sup>3</sup> David Friedman demolishes this position: the problem, as he puts it, is that "an absolute right to control one's property proves too much." For example,

carbon dioxide is a pollutant. It is also an end product of human metabolism. If I have no right to impose a single molecule of pollution on anyone else's

property, than I must get the permission of all my neighbors to breathe. Unless I promise not to exhale.<sup>4</sup>

He might have added that given the dispersion of one's exhaled carbon dioxide throughout the atmosphere, libertarian principles would require that permission to breathe be granted not only by one's neighbors, but by much or even all of the earth's human population. Nor does it take much effort to see that strict libertarians must object to much more than the exhalation of carbon dioxide. No atmospheric pollutant, from industrial emissions to campfire smoke, can be kept from invading the lungs of unwilling human beings. Even the sight of another human being or of the changes he or she wreaks on the natural environment (e.g., by building an ugly house, or any house at all, that is visible to his or her neighbors) is a physical infringement of individual rights. For according to libertarian doctrine, as Friedman puts it,

I have the absolute right to do what I want on my land, provided that I refrain from interfering with your similar right on your land.

But what counts as interfering? If I fire a thousand megawatt laser beam at your front door I am surely violating your property rights, just as much as if I used a machine gun. But what if I reduce the intensity of the beam—say to the brightness of a flashlight? If you have an absolute right to control your land, then the intensity of the laser beam should not matter. Nobody has a right to use your property without your permission, so it is up to you to decide whether you will or will not put up with any particular invasion.

So far many will find the argument convincing. The next step is to observe that whenever I turn on a light in my house, or even strike a match, the result is to violate the property rights of my neighbors. Anyone who can see the light from his own property, whether with the naked eye or a powerful telescope, demonstrates by doing so that at least some of the photons I produced have trespassed onto his property. If everyone has an absolute right to the protection of his own property then anyone within line of sight of my can enjoin me from doing anything at all which produces light<sup>5</sup>

—or, one might add, anything at all which alters the pattern of light that would otherwise reach one's neighbors.

Of course this is outlandish, but only because it is a *reductio ad absurdum* of libertarian principles. At bottom libertarianism seeks to make every human being the ruler of his or her own domain, as delimited by his or her property rights. Those rights instantiate the principle that nobody should be subjected to any physical aggression. In Rothbard's words, "everyone should be able to do what he likes, except if he commits an overt act of

aggression against the person and property of another.”<sup>6</sup> Property rights serve this principle by insulating people from each other, so that they may do as they wish on their own land, free from interference. Since the atmosphere cannot be divided into parcels of private property as land can, strict libertarianism would require that each person possess his or her own atmosphere, unpolluted by the activities of anyone else. The libertarian ideal is, in short, so sensitive to environmental externalities that it is incompatible with human coexistence. Short of the ultimate in atomistic individualism—a planet for every person—any pollution, and hence any human activity, is, in the libertarian view, a crime.

### *Libertarian Epicycles*

In a classic paper on libertarian environmental jurisprudence, Rothbard labors heroically to escape this uncomfortable conclusion. First, he distinguishes between private-property “boundary crossings” that “are invisible, undetected by man’s senses, and harmless,” on the one hand, and those that are tangible and harmful, on the other. The first group of boundary crossings, he maintains, are “not really invasions of property, for we must refine our concept of invasion to mean not just boundary crossings, but boundary crossings that in some way interfere with the owner’s use or enjoyment of his property. What counts is whether the senses of the property owner are interfered with.”<sup>7</sup>

The idea that human beings are entitled to be free of phenomena they can detect directly, through their natural sense organs, but not indirectly, through the use of their minds and scientific measuring devices, has no discernible basis either in the notion that “every man is a self-owner, having absolute jurisdiction over his own body” and, by extension, over the property he “homesteads,” or in its corollary, that “one does have a right to not have his air invaded by pollutants generated by an aggressor.”<sup>8</sup> But even if one grants that Rothbard’s sensory primitivism disposes of the threat that exhaled carbon dioxide poses to the property rights of others (leaving aside possible greenhouse effects), it does not address such phenomena as photon pollution, which *are* evident to the senses and which most surely may interfere with one’s “enjoyment” of his or her property.<sup>9</sup>

This is where Rothbard’s above-quoted stipulation that pollution must be “harmful” comes in, but it does not sit well with his opposition, earlier in the same article, to the “mischief” committed by those legal and political theories that, by substituting “the vague concept of ‘harm’ . . . for the precise one of physical violence,” fail to “pinpoint physical invasion as the only human action that should be illegal.”<sup>10</sup> Within a few lines of thus expressing his opposition to using harm as a criterion of coercion,

Rothbard must reverse himself, embracing this “vague concept” in order to stave off the prospect of prohibiting virtually all human activity.

Rothbard manages this by recourse to a legalism that has it both ways. Following common-law usage, he redefines harm as “physical invasion of person or property.”<sup>11</sup> At first glance this seems to be a dead end: his definition simply christens as “harm” his doctrine of forbidding only physical invasion; but it is the doctrine, not what it is called, that causes the problem of banning all boundary crossings (or at least all that are perceivable by the natural senses), thereby making human life impossible. It soon transpires, however, that merely by attaching the previously “vague” word *harm* to what Rothbard originally portrayed as its “precise” antidote (the doctrine of physical invasion),<sup>12</sup> Rothbard has smuggled into his boundary-crossings theory the “mischievous” *content* of the doctrine of harm: “Physical invasion or molestation needs to be actually ‘harmful’ or to inflict severe damage in order to constitute a tort.”<sup>13</sup> This, of course, is exactly the principle Rothbard began by opposing. When he tries to reconcile this self-contradiction, he leaves his doctrine stranded by half retracting it:

The courts properly have held that such acts as spitting in someone’s face or ripping off someone’s hat are batteries. Chief Justice Holt’s words in 1704 still seem to apply: “The least touching of another in anger is battery.” While the actual damage may not be substantial, in a profound sense we may conclude that the victim’s person was molested, was interfered with, by the physical aggression against him, and that these seemingly minor actions have become legal wrongs.<sup>14</sup>

So: the unsound doctrine of harm must be replaced by that of physical boundary crossings. But if we call the latter “harm,” then we can insist that it require “severe damage”—ruling out the prosecution of photon polluters, for instance. Then again, prosecutable damage can merely amount to dislodging somebody’s hat, which apparently is not severe but is “profound.” So we find ourselves back at a harm-free boundary-crossings doctrine that would *not* prevent the courts from taking action against photon pollution.

Rothbard might have fared better had he openly embraced the harm principle in order to rule out prohibitions of photon-like boundary crossings, but attacking the “vague concept of ‘harm’” has an important purpose. Rothbard recognizes that those liberals—including Mill and Hayek—who define coercion in terms of harm thereby “permi[t] and justif[y] a wide range of government interference with property rights” in order to avert the harm that may follow from strictly enforcing such rights.<sup>15</sup> Although private-property libertarianism and social-democratic

liberalism have in common a commitment to individual freedom, the latter, which seeks to preserve freedom by protecting the individual from harm, avoids the atomistic conundrum that results from equating freedom with the inviolability of physical boundaries.

Rothbard's understandable desire to steer between the rock of social democracy and the hard place of environmental extremism may account for his self-contradictions. But this is a dilemma that afflicts libertarianism in general, not just Rothbard's version of it. The question is, should libertarians define coercion without reference to harm? This would preclude the statism that might follow from a broader definition, yet would condemn human activities that lead to boundary crossings by photons and other tangible yet harmless emissions. Or should they allow such forms of pollution since they are not harmful, thereby opening the door to social democracy so as to rectify what *is* harmful?

The latter option suffers the additional disadvantage of sanctioning a wide array of state action against harmful *pollution*. Thus, even if Rothbard were somehow to square his opposition to the concept of harm with his use of it to stave off environmental *extremism*, he would then have to find a way around environmental *statism*. When he allows himself to wonder what would happen if such physical but intangible boundary crossings as radio waves were found to be "harmful, [i.e.] that they cause cancer or some other illness," he admits that "then they would be interfering with the use of one's person and should be illegal and enjoined. . . ." Lest he rescue libertarianism from David Friedman only to deliver it to Al Gore, he immediately snatches back this concession with a new legalism: ". . . provided of course that proof of harm and causal connection between specific invaders and specific victims are established beyond a reasonable doubt."<sup>16</sup>

Why this delicacy about the standards of evidence? Operationally, as we shall see, because it would rule out legal action against most forms of pollution, which are notoriously difficult to trace to their source and which harm people and ecosystems cumulatively and thus interactively rather than all at once and independently (like knives, guns, and other traditional instruments of battery). Ostensibly, because "where it is unclear whether a person is committing aggression . . . the only procedure consonant with libertarian principle is to do nothing; to lean over backwards to ensure that the judicial agency is not coercing an innocent man. If we are unsure, it is far better to let an aggressive act slip through than to impose coercion and therefore to commit aggression ourselves."<sup>17</sup>

This rationale for strict standards of causal evidence may not at first seem too objectionable: it expresses a deontological perspective often assumed to be inherent in libertarianism. But there is no justification for this assumption.<sup>18</sup> Granting for the moment that individual freedom is the

supreme value, should one not try to maximize it and minimize its opposite (as defined by libertarians), physical aggression? Why not, then, embrace a teleological version of libertarianism, which obliges one to suppress as much aggressive violence as possible, rather than the deontological version, which forbids one to commit any act of aggression even to stop others from undertaking much greater aggression?

According to the deontological view, the deaths of innocent civilians in World War II presumably made that war an atrocity on libertarian grounds, regardless of the greater crimes a victorious Axis might have committed. And if, to prevent those civilian deaths, one could have assassinated Hitler in 1939, but only by also killing an innocent bystander, one should have refrained from doing so, sacrificing tens of millions of innocents to avoid killing one. If, moreover, to spare the bystander's life as well as millions of others, one could have assassinated Hitler in 1938, but only by knocking off the hat of another innocent bystander, the latter act of aggression, too, must stand condemned by deontological libertarianism.

This is the position Rothbard has to defend if he is to avoid an environmentalist state committed to rectifying the rights violations he has himself condemned by embracing the principle of harm. For only by construing libertarianism as strictly deontological can Rothbard maintain that uncertainty about the identity of the victims of harmful pollution should prevent a libertarian legal system from banning it. He writes:

Evidence must be constructed to demonstrate that aggressor A in fact initiated an overt physical act invading the person or property of victim B.<sup>19</sup>

The prevalence of multiple sources of pollution is a problem. How are we to blame emitter A if there are other emitters, or if there are natural sources of emission? Whatever the answer, it must not come at the expense of throwing out proper standards of proof and conferring unjust special privileges on plaintiffs and special burdens on defendants. . . .

In libertarian theory, it is only permissible to proceed coercively against someone if he is a proven aggressor, and that aggression must be proven in court (or in arbitration) beyond a reasonable doubt. Any statute or administrative regulation necessarily makes actions illegal that are not overt initiations of crimes or torts according to libertarian theory. Every statute or administrative rule is therefore illegitimate, and itself invasive and a criminal interference with the property rights of non-criminals.<sup>20</sup>

. . . Statistical correlation . . . does not in itself establish proof of causation.<sup>21</sup>

Is libertarianism, then, a doctrine of personal moral purity, or rather one that would minimize what it defines as evil? If it is the latter, then activities



that emit harmful pollutants should be enjoined, on the grounds that they violate the rights of sovereign person- and property-owners—even in the face of uncertainty about which polluter is responsible for harm to which victim, or whether a given polluter is responsible for any harm at all. If two gunmen fire six rounds apiece into a crowd, hitting and killing seven people, both could, in this view, be prosecuted for murder, even if nobody could prove which victims were killed by which criminal. Similarly, someone observed poisoning a city's water supply with a substance that induces heart attacks could be prosecuted if, subsequently, more heart attacks occurred than usual, even though the identity of the victims remained unknown. Nor would a libertarian legal system, under this interpretation, refrain from prosecuting a conspiracy of poisoners each of whom added an innocuous quantity of poison to the reservoir, which taken together made the water lethal—despite the impossibility of identifying who they each killed. By the same token, even an “accidental conspiracy” of poisoners—such as automobile owners whose cars emit nonlethal amounts of carbon monoxide that together are statistically correlated with higher death rates—should be punishable. Finally, there would be no reason for such a libertarian system not to promulgate a “statute or administrative regulation” that prohibited accidental conspiracies in advance, even though it could not be shown, except statistically, that the aggregated effects of the prohibited actions constituted harmful aggression.

In Rothbard's view, by contrast, the highest obligation of a libertarian judicial system is to be sure not to dirty its hands with aggression, even if by doing so it could prevent greater aggression. It is difficult to imagine how such a legal system could enjoin or punish any crime whatsoever, for inasmuch as there is never complete certainty as to the guilt of the parties thereby coerced, it is always possible that any action to forestall or punish aggression will itself turn out to be aggressive. No police officer—indeed, nobody acting in self-defense—could, in this view, ever fire a weapon, since the bullet might hit an innocent party. Again Rothbard finds himself in an unviable position: surreptitiously sanctioning the harm principle, he must now hedge it about with evidentiary requirements so unyielding that they would render libertarianism sterile. In the end he must move even farther away from libertarian principles by adopting the extraordinarily vague doctrine of “reasonable doubt” in order to allow legal authorities *some* latitude in the face of uncertainty. How Rothbard squares this doctrine with the imperative of deontological purity, or ensures that it should not be interpreted to allow legal action against accidental conspiracies of polluters, he never reveals.

In view of Rothbard's track record as a libertarian theorist,<sup>22</sup> it may seem unfair to libertarian environmentalism to focus on his arguments for

Yet his is the most detailed attempt to apply libertarianism to environmental problems, and the difficulties he encounters in doing so seem to spring from its very essence. Each time he sidesteps the environmentally extremist implications of libertarianism, he reaffirms the core problem of the doctrine: its claim that what justifies an action is who chooses it (i.e., the individual free from physical aggression) rather than whether it leads to an intrinsically good outcome — or, if one prefers, its *equation* of freedom with the good. Conflicting goods are ruled out of court.

Thus, Rothbard declares that “utilitarian considerations must always be subordinate to the requirements of justice” (defined in libertarian terms).<sup>23</sup> Yet there can be little doubt that it is precisely a realization of the unutilitarian consequences of disregarding those conditions that puts Rothbard at war with his own principles. He does not explain *why* “we must refine our concept of invasion to mean not just boundary crossings, but boundary crossings that in some way interfere with the owner’s use or enjoyment of his property,”<sup>24</sup> but the reason is obvious: otherwise, every involuntary physical interaction between human beings sharing the same atmosphere would count as aggression and would have to be proscribed. Similarly, when Rothbard suddenly adopts the concept of harm a few paragraphs after rejecting it as mischievously vague, he further constricts the applicability of libertarian principles, again saving them from the consequences of being implemented in the real world. With these two steps, Rothbard manages to reconcile libertarianism with the existence of two or more human beings on earth, but at the price of empowering the state to police people’s interactions to be sure that they are not harmful. This requires Rothbard to endorse a strictly deontological reading of libertarian principles, further narrowing their scope. Having first fended off the ultra-environmentalism to which libertarianism logically leads, Rothbard has now fended off the welfare state only by disallowing any action against crime. Libertarianism has been shrunk down to the vanishing point. Only by conjuring up the arbitrary standard of “reasonable doubt” does Rothbard resurrect his dead doctrine, or at least a ghostly image of it.

### *Free-Market Environmentalism as Postlibertarian Policy*

No such intellectual contortions characterize the other school of thought that has been considered in this issue of the journal, free-market environmentalism. Indeed, Rothbard’s defense of libertarianism is explicitly directed against the Chicago-school insights on which free-market environmentalism is based.<sup>25</sup> But as Herman Daly, Mark Sagoff, and Albert Weale show,<sup>26</sup> market-based or market-like solutions to environmental problems are no substitute for libertarianism.

Such free-market environmentalist measures as tradeable pollution permits may well be better at reducing environmental degradation than command-and-control regulation: by giving polluters financial incentives to use knowledge of their production processes and facilities to find ways to reduce pollution, they make polluters' self-interest coincide with aggressive pollution reduction, while under traditional regulatory regimes, polluters have the incentive only to comply grudgingly with environmental commands imposed by relatively uninformed central authorities. But this efficiency advantage has already led to the widespread adoption of free-market environmental devices without making the governments employing them any more libertarian: by not banning pollution outright, they continue to violate the libertarian prohibition of physical boundary crossings.

If anything, free-market environmentalism provides merely what one analyst calls "an important message for the modern regulatory state,"<sup>27</sup> namely that it is best served by trying to "maximize individual incentives. This," he notes, "may well include versions of privatization, such as transferable emission rights, but will hardly include a wholesale substitution of the environmental regulatory system," since "most environmental resources are incapable of being accurately priced."<sup>28</sup> The pricing of environmental goods that is generated by free-market environmentalist devices relies on an initial political determination of how much a given pollutant should be reduced. A government must first decide which pollutants to control, then by what amount, before it can know how many emissions permits to issue. The market in such permits does not *replace* politics; it supplements it by providing the most efficient means for achieving politically determined ends.

Even worse, there is no apparent free-market solution to the most difficult environmental problems, such as global warming and ozone depletion. In order to avoid this conclusion, the most prominent free-market environmentalists are reduced to denying the existence of such problems a priori by closing their minds to the possibility of unwelcome climatological evidence<sup>29</sup> or to imagining some technological solution to the problem of tracing atmospheric emissions, as the only alternatives to inaction or to a gigantic extension of state power over economic activity under the rubric of sustainable development.<sup>30</sup> In the case of global warming, however, tracing emissions to their sources is inconceivable, given that every breath one exhales and every instance of combustion generates greenhouse gases. Thus, neither environmental coercion nor the growing environmentalist state can be abolished by free-market environmentalism, unless there turn out to be no scientifically credible forms of global atmospheric pollution. Unless that happens to be the case, free-market envi-

ronmentalists might best be seen as technocrats devoted to streamlining the operations of the megastate.

At its best, free-market environmentalism amounts to the undoctinaire appropriation of the same sort of consequentialist economic insights that libertarians transform into the non-consequentialist dogma of the intrinsic value of individual freedom (narrowly defined).<sup>31</sup> Thus, free-market environmentalism is a form of postlibertarian public policy.<sup>32</sup> But as we have just seen, it is a policy program of drastically less ambitious dimensions than the radical antistatism with which libertarianism began. There seem to be few or no alternatives to such a free-market meliorism on environmental issues. On the one hand, libertarian environmentalism is untenable even on its own grounds. On the other, free-market environmentalism is statist at its core.

Why should this statism make its proponents uncomfortable? The answer, presumably, is to be found less in economics per se than in politics, at least politics as seen through the lens of economics: that is, in the perception among those who understand the economic benefits of free markets that, as shown by the routine disregard for free-market tenets in political discussion, *politics is irrational*, so that environmental policy that is politically rather than economically driven is liable to be demagogic and wasteful.<sup>33</sup> As Terry Anderson and Donald Leal suggest, "global warming policies are formulated in the same political arena as economic policy, and in that arena a mixture of incomplete theory and bad information do not give us a recipe for success."<sup>34</sup>

The conviction that political decision making is irrational is arguably one of the key components of the mindset that is receptive to both libertarianism and free-market environmentalism. But it is not very well reflected in either approach, since it neither warrants the antihuman extremes of libertarian environmentalism nor the statist starting point of free-market environmentalism. Is it possible that free-market environmentalism could be modified so that a more rational decision-making procedure than democratic politics could determine which pollutants to reduce and by what amount?

### *Depoliticizing the Atmosphere*

The atmosphere is now a classic case of common property, the privatization of which seems impossible. It is conceivable, however, that equal rights to pollute the atmosphere could be given to every human being, and then traded among them. This would accomplish nothing unless each pollution voucher were limited in quantity, but it is at this point that democratic politics, with its susceptibility to simplistic but vivid appeals,

usually enters the picture. How else, though, to determine how much to reduce which pollutants than by means of countrywide or worldwide systems of representative democracy?

One possibility would be to allot to each person annually the right to his or her equal proportion of each designated pollutant emitted over the previous year. This would still require political decisions about which pollutants to "share out," but by giving people the right to an equal share in the amount of each pollutant during a past time period rather than setting a pollution-reduction goal, it would remove at least one category of what should be scientific decisions from political determination: the category of quantity. To be sure, how much pollutant X should be reduced would not now be decided scientifically; political decision making would be replaced by market decisions.

Industries that wanted to engage in activities that required more than their owners' per-capita share of pollutant X would have to buy excess shares from others, creating a market in shares. Most people would presumably be willing to sell their excess shares for pecuniary reasons, but environmentalists would be able to withhold their excess shares from the market, if they felt strongly enough about it, and to bid in the market for the right to retire others' shares. Every share thus retired would reduce the amount of the pollutant emitted that year, meaning that the baseline quantity of rights distributed in all subsequent years would be that much lower. Conversely, as the base of available rights shrank each year, their price would rise, slowing the reduction of the pollutant in proportion to the cost to industry of conserving it. The net effect would be consistently but ever more gradually to push down the allowable level of the pollutant, while imposing costs both on those who wanted to emit a pollutant and those who wanted to reduce it. Those who favored pollution reduction would have to pay for it by buying shares and forgoing the profits that would have accrued from the shares they retired; industries (and the consumers of their products) would have to pay for shares from everyone else, leading to a redistribution of income to the impoverished (and partially mitigating the political unfeasibility of the idea by giving industrializing countries' residents an economic stake in it).

The purpose of environmentalists' public relations efforts would shift from swaying the ill-informed public with hair-raising stories of environmental doom toward convincing people wealthy enough to afford paying for environmental protection that reducing pollutant X, as opposed to Y or Z, would be worth their financial sacrifice. There is little reason to expect this smaller audience to be more sophisticated than the mass audience that is now targeted, but at least it would bear the costs of its convictions rather than shifting it to others. The point is not that industrialists'

chilling forecasts of economic catastrophe due to environmental protection are inherently more truthful than the folklore of their adversaries; it is instead to underscore that the new system would pit environmentalist propaganda against industrial purchasing power in the battle to persuade people to retire or sell their shares.

For that reason, would this proposal handicap environmentalists, who would no longer be so capable of leveraging their relatively meager resources into broad public support through the mass media? Yes, because they would now be competing against the huge material incentives offered by industrialists eager to buy shares. But on the other hand, once a pollutant were "shared out," it would be guaranteed to be reduced by *some* amount every year—which is more than can be said of the status quo.

The main political battles would be fought over which pollutants to share out; but here the decisions might be more rational than they currently are. It is much easier for an uninformed electorate to decide if, say, CO<sub>2</sub> should be reduced than by how much. On the other hand, since quantitative decisions are now less likely to be made by electorates than by politically insulated bureaucrats who may bring expertise to bear, it is conceivable that turning them over to the market would result in scientifically less rational decision making than at present.<sup>35</sup>

This thought experiment suggests the following tentative conclusions.

First, not only is there no feasible libertarian environmental policy: no free-market environmental device seems to be able to achieve what might be taken to be the postlibertarian goal of completely depoliticizing decision making, although there might be ways of depoliticizing *to some extent* both the means of pollution reduction and the determination of the amounts to be reduced.

Second, even those types of depoliticization would not in themselves produce more rational decisions. They would temper the irrationality of environmental discourse in modern democracies by redirecting the debate to the preferences of participants in the markets for pollution rights rather than the preferences of voters in mass elections; but since the issues around which these preferences would be arrayed would remain nearly as distant from the expertise of most market participants as they now are from that of most voters, any gain in rationality would be slight. The irrationality of public debates about environmental issues is a function not only of democratic politics, apparently, but of the scientific complexity of such issues. In the case of complex economic issues, the self-interested expertise of market participants *can* result in aggregate decisions that are collectively rational, thanks to the information-transmitting role of a market price system; while when economic decisions are made politically, rational decision-making demands of the electorate an unattainable degree of theo-

retical knowledge.<sup>36</sup> But in the case of the environment, there are no evident mechanisms that can translate self-interest into collective rationality: the decision about how much to reduce a pollutant would still rest on the unscientific judgments of laypeople observing through propagandistic filters a debate among experts, even though their decisions would be rendered through their retirement of shares rather than their votes for more environmental protection. There seems to be no escaping the difficulty of reaching decisions about such issues short of leaving them up to the experts directly, in which case deciding which experts to empower would become problematic.

Third and consequently, one begins to wonder whether depoliticizing decision making should serve as the goal of a postlibertarian political orientation after all. Recall that depoliticization seemed to emerge as a putative goal of postlibertarian public policy once the impossibility of achieving the atomistic goals of libertarianism—not to mention the internal inconsistency of those goals<sup>37</sup>—and the statism of free-market environmentalism sent us searching for the underlying motivation of both approaches. But if depoliticization would not result in appreciable gains in rationality, then even if the overwhelming political barriers to the type of depoliticized environmental regime just considered could be overcome, perhaps it is no more worthwhile as a policy program than is libertarianism.

What, then, is left of postlibertarianism? That is, what is left of the libertarian impulse once it is stripped of its dogmatic instantiation in Rothbardian political theory; and what, besides a preference for more efficient government, is left of free-market environmentalism?

The fact that no decisive *policy* program follows from the idea of depoliticization does not mean that the idea has no value. I suggest that its value is, at this juncture, that it may help us better to understand the politics and culture of modernity. Marxism survives its economic defeat by assuming the form of a system of ideas that problematizes the role of class in our understanding of the modern world. Similarly, libertarianism now faces a kind of political defeat, for while the Austrian-school argument against socialism has been proven valid, libertarians may be unable to offer any internally consistent reason to oppose the welfare state;<sup>38</sup> and even more clearly, there seems to be no escaping the environmental state. This deprives postlibertarians of any all-embracing normative ideal. Yet if the initial impulse behind libertarianism was an empirical observation about the nature of modernity—the irrationality of its politics and of democratic culture<sup>39</sup>—then it is appropriate for postlibertarianism to develop as a descriptive rather than a normative system of thought, at least until its insights have been tested and their normative implications debated. In

short, understanding—scholarship—should now take precedence over political advocacy.

I myself do not see any libertarian alternative to the scholarly course. One might pursue the free-market meliorist's path as part of a socially liberal, economically conservative pressure group within, say, the Republican party, seeking market-based, independent-sector, or local<sup>40</sup> solutions to environmental problems whenever possible, in preference to command-and-control, statist, and globalist approaches. But without an overarching vision of society that does away with democratic or bureaucratic decisions about the environment, this path would be libertarian in name only. Or one might—whether from anthropocentric or ecocentric motives—try to reconfigure property rights so that they do not presuppose atomistic individualism, as Gus diZerega and Laurent Dobuzinskis propose;<sup>41</sup> but this approach, too, would appear unavoidably to involve decision making about what constitutes proper stewardship of the atmosphere, weather patterns, and so forth.

Alternatively, one might consign oneself to political irrelevance by hoping for some way to privatize the atmosphere, the oceans, and the other “tougher problems” faced by free-market environmentalism.<sup>42</sup> One might engage in a form of libertarian Lysenkoism, deciding in advance which environmental scientists to believe by virtue of the political implications of their findings. But if instead one lets go the urge to liberate humanity from the state, casting off the obligation to define a libertarian position on every “issue” (or to defend any position at all), stilling the impulse to perceive everything in politically predetermined categories, the result may be liberation of a different sort: freedom from the tortuous paths dictated by ideological imperatives; freedom to define oneself in terms of one's relationship to truth, instead of defining truth in terms of its relationship to one's dogma; and freedom from the nagging fear that science may reveal a world fundamentally at odds with the picture assumed and demanded by one's deepest commitments.

The environment is the libertarian Waterloo: it reveals the flaws of the doctrine in a way that seems to ensure that no “answer” is forthcoming. Rather than hoping for a miracle that would preserve their fundamentally political self-conception, perhaps the best thing libertarians can now do is put their dreams of changing the world on hold while they attempt simply to understand it.



## NOTES

1. Mark Sagoff, "Free-Market versus Libertarian Environmentalism," *CRITICAL REVIEW* 6, nos. 2-3 (Spring-Summer 1992): 211-30; Roger Taylor, "The Environmental Implications of Liberalism," *ibid.*, 265-82.
2. Martin Anderson, *Christian Science Monitor*, January 4, 1989: 19; quoted without article title in Walter E. Block, ed., *Economics and the Environment: A Reconciliation* (Vancouver: Fraser Institute, 1990), x.
3. Murray N. Rothbard, "Law, Property Rights, and Air Pollution," *Cato Journal* 2, no. 1 (Spring 1982); reprinted in Block, 233-79. Quotation appears on 237.
4. David Friedman, *The Machinery of Freedom*, 2nd ed. (LaSalle, Ill.: Open Court, 1989), 168.
5. *Ibid.*, 168.
6. Rothbard, 263.
7. *Ibid.*, 252.
8. *Ibid.*, 237, 256.
9. Cf. *ibid.*, 260, where Rothbard counts the "creation of fear" in the victim of an attempted crime as a prosecutable assault. Why, then, does he fail to count fears of the effects of intangible physical boundary crossings as assaults?
10. *Ibid.*, 237.
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*, 238.
14. *Ibid.*
15. *Ibid.*, 267n13.
16. *Ibid.*, 252, *emph. added.*
17. *Ibid.*, 243.
18. Cf. Jeffrey Friedman, "After Libertarianism: Rejoinder to Narveson, McCloskey, Flew, and Machan," *CRITICAL REVIEW* 6, no. 1 (Winter 1992): 138.
19. Rothbard, 243.
20. *Ibid.*, 257-8.
21. *Ibid.*, 245.
22. See Jeffrey Friedman, "The New Consensus: II. The Democratic Welfare State," *CRITICAL REVIEW* 4, no. 4 (Fall 1990): 662, 664-6, 702-4.
23. Rothbard, 258.
24. *Ibid.*, 252.
25. *Ibid.*, 234-6.
26. Herman E. Daly, "Free-Market Environmentalism: Turning a Good Servant into a Bad Master," *CRITICAL REVIEW* 6, nos. 2-3 (Spring-Summer 1992): 171-83; Sagoff; Albert Weale, "Nature versus the State? Markets, States, and Environmental Protection," *ibid.*, 153-70.

27. Michael C. Blumm, "The Fallacies of Free Market Environmentalism," *Harvard Journal of Law and Public Policy* 15, no. 2 (Spring 1992): 271-89; quotation is on 373.
28. Cf. *ibid.*, 373, 372.
29. Terry L. Anderson and Donald R. Leal, *Free Market Environmentalism* (San Francisco: Pacific Research Institute, 1991), 160-61.
30. *Ibid.*, 165-7.
31. Cf. J. Friedman, "The Democratic Welfare State," 661-4.
32. On postlibertarianism, see J. Friedman, "After Libertarianism."
33. Cf. J. Friedman, "The Democratic Welfare State," 676-80.
34. Anderson and Leal, 161.
35. J. Friedman, "The Democratic Welfare State," 683-4.
36. I leave aside the argument that retrospective economic voting—throwing out the incumbent party when times are bad, reelecting it when they are good—is a mechanism that rationalizes mass politics, since this is an argument from rationality not in the sense of expertise, but in the sense of rational *ignorance*. Cf. Morris Fiorina, *Retrospective Voting in American National Elections* (New Haven: Yale University Press, 1981).
37. On the internal contradictions of libertarianism, see J. Friedman, "The Democratic Welfare State," 642-4 and 663-6; and *idem*, "After Libertarianism."
38. Cf. *ibid.*; Richard Cornuelle, "The Power and Poverty of Libertarian Thought," *CRITICAL REVIEW* 6, no. 1 (Winter 1992): 1-10; and J. Friedman, "The Democratic Welfare State," 666-76.
39. Cf. *ibid.*, 683-90.
40. Cf. Emery M. Roe, "Global Warming as Analytic Tip," *CRITICAL REVIEW* 6, nos. 2-3 (Spring-Summer 1992): 411-27.
41. Gus diZerega, "Social Ecology, Deep Ecology, and Liberalism," *ibid.*, at 347-8; Laurent Dobuzinskis, "Is Progressive Environmentalism an Oxymoron?" *ibid.*, at 289.
42. Anderson and Leal, 154.